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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

APR 30 2012

JAMES R. LARSEN, CLERK  
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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON**

JOSEPH YANEZ, ) Case No. CV-12-227-EFS  
Plaintiff, )  
vs. ) **COMPLAINT**  
NIAGARA CREDIT SOLUTIONS,)  
INC, )  
Defendant. )

## NATURE OF ACTION

1. This is an action brought under the federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the Washington Consumer Protection Act (“WCPA”), Chapter 19.86, RCW.

## JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a).

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b),

**COMPLAINT -1**

WEISBERG & MEYERS, LLC  
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Loon Lake, WA 99148  
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1 where the acts and transactions giving rise to Plaintiff's action occurred in this  
2 district, where Plaintiff resides in this district, and/or where Defendant transacts  
3 business in this district.  
4

5 **PARTIES**  
6

7 4. Plaintiff, Joseph Yanez ("Plaintiff"), is a natural person who at all  
8 relevant times resided in the State of Washington, County of Douglas, and City of  
9 Palisades.  
10

11 5. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).  
12

13 6. Plaintiff is a "debtor" as defined by RCW § 19.16.100(11).  
14

15 7. Defendant, Niagara Credit Solutions, Inc ("Defendant") is an entity  
16 who at all relevant times was engaged, by use of the mails and telephone, in the  
17 business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C.  
18 § 1692a(5).  
19

20 8. Defendant at all relevant times was engaged, by use of the mails and  
21 telephone, in the business of attempting to collect a "claim" from Plaintiff as  
22 defined by RCW § 19.16.100(5).  
23

24 9. Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6).  
25

26 10. Defendant is a "collection agency" as defined by RCW §  
27 19.16.100(2), or alternatively, an "out-of-state collection agency" as defined by  
28 RCW § 19.16.100(4).

## FACTUAL ALLEGATIONS

11. Plaintiff is a natural person obligated, or allegedly obligated, to pay a  
3 debt owed or due, or asserted to be owed or due a creditor other than Defendant.

12. Plaintiff is a natural person obligated, or allegedly obligated, for the  
6 payment of money or thing of value arising out of any agreement or contract,  
7 express or implied, owed or due, or asserted to be owed or due a creditor other  
8 than Defendant.

13. Plaintiff's obligation, or alleged obligation, owed or due, or asserted  
12 to be owed or due a creditor other than Defendant, arises from a transaction in  
13 which the money, property, insurance, or services that are the subject of the  
14 transaction were incurred primarily for personal, family, or household purposes.

14. Defendant uses instrumentalities of interstate commerce or the mails  
17 in a business the principal purpose of which is the collection of any debts, and/or  
18 regularly collects or attempts to collect, directly or indirectly, debts owed or due,  
19 or asserted to be owed or due another.

22. In connection with collection of an alleged debt in default,  
23 Defendant sent Plaintiff initial communication dated December 21, 2011, in  
24 which Defendant demanded payment of \$1,600.83 for payment of an alleged debt  
25 to Springleaf Financial Services, Inc. f/k/a American General Financial Services.  
26

27. Defendant's initial communication failed to provide an itemization

1 of the amount of debt, or otherwise failed to provide all of the information  
2 required by RCW § 19.16.250(8).  
3

4 17. Plaintiff previously paid the alleged debt to Springleaf Financial  
5 Services, Inc. f/k/a American General Financial Services in full on or about  
6 August 14, 2007.  
7

8 18. Further, a court of competent jurisdiction determined Plaintiff did  
9 not owe said debt subsequent to a trial of the matter on or about March 5, 2010,  
10 where Springleaf Financial Services, Inc. f/k/a American General Financial  
11 Services was denied judgment against Plaintiff for the alleged debt.  
12  
13

14 19. Upon receipt of Defendant's demand for payment, and as a direct  
15 and proximate result thereof, Plaintiff sent Defendant, via certified mail, a written  
16 dispute letter dated December 29, 2011.  
17

18 20. As a direct and proximate result of Defendant's collection efforts,  
19 Plaintiff sent the abovementioned dispute letter.  
20

21 21. Plaintiff incurred a charge for the postage and mailing of the  
22 abovementioned dispute letter.  
23

24 **COUNT I**  
25 **VIOLATION OF 15 U.S.C. § 1692e(2)(A)**  
26

27 22. Plaintiff repeats and re-alleges each and every allegation contained  
above.  
28

1           23. Defendant violated 15 U.S.C. § 1692e(2)(A) by falsely representing  
2           the character, amount, or legal status of Plaintiff's debt.  
3

4           WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 5           a) Adjudging that Defendant violated 15 U.S.C. § 1692e(2)(A);  
6  
7           b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §  
8           1692k, in the amount of \$1,000.00;  
9  
10          c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k;  
11          d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in  
12           this action;  
13  
14          e) Awarding Plaintiff any pre-judgment and post-judgment interest as  
15           may be allowed under the law;  
16  
17          f) Awarding such other and further relief as the Court may deem just  
18           and proper.

19  
20           **COUNT II**  
21           **VIOLATION OF 15 U.S.C. § 1692e(10)**

22           24. Plaintiff repeats and re-alleges each and every allegation contained  
23           above.

24           25. Defendant violated 15 U.S.C. § 1692e(10) by using false  
25           representations and deceptive practices in connection with collection of an  
26           alleged debt from Plaintiff.  
27  
28

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692e(10);
  - b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k, in the amount of \$1,000.00;
  - c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k;
  - d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
  - e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
  - f) Awarding such other and further relief as the Court may deem just and proper.

**COUNT III**  
**VIOLATION OF RCW § 19.86.020**

26. Plaintiff repeats and re-alleges each and every allegation contained above.

27. The WCPA declares unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

**RCW § 19.86.020.**

28. “[T]he commission by a licensee or an employee of a licensee of an  
27  
28 act or practice prohibited by RCW 19.16.250 are declared to be unfair acts or

1 practices or unfair methods of competition in the conduct of trade or commerce  
2 for the purpose of the application of the Consumer Protection Act found in  
3 chapter 19.86 RCW." RCW § 19.16.440.

4  
5 29. The Washington Collection Agency Act provides:  
6

7 No licensee or employee of a licensee shall:  
8 \* \* \*

9  
10 (8) Give or send to any debtor or cause to be given or sent to  
11 any debtor, any notice, letter, message, or form, other than  
12 through proper legal action, process, or proceedings, which  
13 represents or implies that a claim exists unless it shall indicate  
14 in clear and legible type:

15 \* \* \*

16 (c) If the notice, letter, message, or form is the first notice to  
17 the debtor or if the licensee is attempting to collect a different  
18 amount than indicated in his or her or its first notice to the  
19 debtor, an itemization of the claim asserted must be made  
20 including:

21 (i) Amount owing on the original obligation at the time it  
22 was received by the licensee for collection or by assignment;

23 (ii) Interest or service charge, collection costs, or late  
24 payment charges, if any, added to the original obligation by the  
25 original creditor, customer or assignor before it was received by  
26 the licensee for collection, if such information is known by the  
27 licensee or employee: PROVIDED, That upon written request  
of the debtor, the licensee shall make a reasonable effort to  
obtain information on such items and provide this information  
to the debtor;

28 (iii) Interest or service charge, if any, added by the licensee

1 or customer or assignor after the obligation was received by the  
2 licensee for collection;

3 (iv) Collection costs, if any, that the licensee is attempting to  
4 collect;

5 (v) Attorneys' fees, if any, that the licensee is attempting to  
6 collect on his or her or its behalf or on the behalf of a customer  
7 or assignor; and

8 (vi) Any other charge or fee that the licensee is attempting to  
9 collect on his or her or its own behalf or on the behalf of a  
10 customer or assignor.

11 RCW § 19.16.250(8).

12 30. Defendant violated RCW § 19.16.250(8) by failing to itemize  
13 Plaintiff's alleged debt or otherwise include the information required by that  
14 section in Defendant's correspondence to Plaintiff.

15 31. By Defendant's violation of RCW § 19.16.250(8), Defendant  
16 engaged in a per se unfair act or practice or unfair method of competition in the  
17 conduct of trade or commerce for the purpose of the application of the WCPA.  
18

19 32. In a private action in which an unfair or deceptive act or practice is  
20 alleged under RCW § 19.86.020, a claimant may establish that the act or practice  
21 is injurious to the public interest because it violates a statute that incorporates  
22 Chapter 19.86 RCW. RCW § 19.86.093(1).  
23

24 33. A violation of the CAA implicates the public interest. *Evergreen*  
25 *Collectors v. Holt*, 60 Wash. App. 151, 156 (Wash. App., Div. 2, 1991)  
26

(explaining that a claimant asserting a *per se* violation based upon a violation of the CAA need not prove that the public interest was affected as “[s]uch an analysis would be superfluous in a case where, as here, the plaintiff establishes a *per se* violation of the Consumer Protection Act by conduct statutorily declared to be violative of the Act”); *see also Panag v. Farmers Ins. Co. of Washington*, 204 P.3d 885, 897 (Wash. 2009) (“The business of debt collection affects the public interest, and collection agencies are subject to strict regulation to ensure they deal fairly and honestly with alleged debtors.”).

34. Defendant’s collection activity directly and proximately caused Plaintiff injury, including time and expense incurred in defense of Defendant’s collection activities, not limited to postage and mailing fees incurred in disputing the validity of the debt sought to be collected and otherwise communicating with Defendant in response to its debt collection activity.

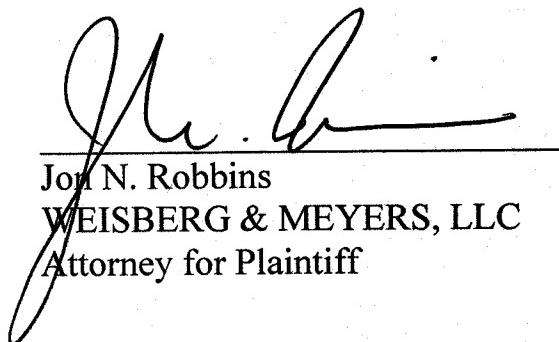
WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated RCW § 19.86.020;
- b) Awarding Plaintiff actual damages pursuant to RCW § 19.86.090;
- c) Awarding Plaintiff discretionary treble damages pursuant to RCW § 19.86.090;
- d) Awarding Plaintiff reasonable attorneys’ fees and costs incurred in this action, pursuant to RCW § 19.86.090;

- 1 e) Awarding Plaintiff any pre-judgment and post-judgment interest as  
2 may be allowed under the law; and  
3  
4 f) Awarding such other and further relief as the Court may deem just  
5 and proper.

6  
7 **TRIAL BY JURY**

8 35. Plaintiff is entitled to and hereby demands a trial by jury.  
9  
10 Respectfully submitted this 17<sup>th</sup> day of April, 2012.

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15 Jon N. Robbins  
WEISBERG & MEYERS, LLC  
16 Attorney for Plaintiff  
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